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IN THE

# Supreme Court of the United States

**October Term, 1958**

**No. 757**

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, a Corporation,

*Appellant,*

v.

BRUCE BENNETT, ATTORNEY GENERAL OF THE STATE OF ARKANSAS, ET AL.,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

## STATEMENT AS TO JURISDICTION

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# INDEX


| | PAGE |
|---|---|
| Statement as to Jurisdiction | 1 |
| Opinion Below | 1 |
| Jurisdiction | 2 |
| Statutes Involved | 2 |
| Question Presented | 3 |
| Statement of the Case | 4 |
| The Question Presented is Substantial | 6 |
| Conclusion | 14 |
| INDEX TO APPENDICES: | |
| Opinion of District Court | 15 |
| Order of District Court | 19 |
| Act No. 12, 2nd Extraordinary Session, 1958 | 20 |
| Act No. 13, 2nd Extraordinary Session, 1958 | 23 |
| Act No. 14, 2nd Extraordinary Session, 1958 | 25 |
| Act No. 16, 2nd Extraordinary Session, 1958 | 28 |


## Table of Cases


| | |
|---|---|
| Aaron v. Cooper, 257 F. 2d 33 (8th Cir. 1958) | 5 |
| Alabama Public Service Comm. v. Southern Ry., 341 U. S. 341 | 7 |
| American Communications Association v. Douds, 339 U. S. 382 | 10 |
| American Federation of Labor v. Watson, 327 U. S. 582 | 7 |
| Barbier v. Connally, 113 U. S. 27 | 12 |
| Bates v. Little Rock, — Ark. —, decided Dec. 22, 1958 | 8 |

PAGE

Brown v. Board of Education, 347 U. S. 483 ..... 1

Bryan v. Austin, 148 F. Supp. 563 (E. D. S. C. 1957), vacated as moot 354 U. S. 933 ..... 2,7

Buchanan v. Warley, 245 U. S. 60 ..... 10

Burford v. Sun Oil Co., 319 U. S. 315 ..... 7

Chicago v. Atchison, Topeka and Santa Fe Ry. Co., 357 U. S. 77 ..... 8

Cooper v. Aaron, 358 U. S. 1 ..... 10

Covey v. Somers, 351 U. S. 141 ..... 11

Crandall v. Nevada, 6 Wall. 35 ..... 12

Ex parte Endo, 323 U. S. 283 ..... 10

Follet v. McCormick, 321 U. S. 573 ..... 12

Government and Civil Employees Organization Committee v. Windsor, 353 U. S. 364 ..... 6

Korematsu v. United States, 323 U. S. 214 ..... 10

Lonesome v. Maxwell, 220 F. 2d 386 (4th Cir. 1955), aff'd 350 U. S. 877 ..... 10

Lovell v. City of Griffith, 303 U. S. 444 ..... 6

Morgan v. Commonwealth of Virginia, 328 U. S. 373 10

Mullane v. Central Hanover B. & T. Co., 339 U. S. 306 11

Murdock v. Pennsylvania, 319 U. S. 105 ..... 12

National Association for the Advancement of Colored People v. Alabama, 357 U. S. 449 .....4, 9, 10

PAGE

National Association for the Advancement of Colored People v. Patty, 159 F. Supp. 503, sub nom Harrison v. National Association for the Advancement of Colored People, — U. S. —, 27 L. W. 3099, October 13, 1958 ..... 2, 7, 8

Pennsylvania v. Williams, 294 U. S. 176 ..... 7

Public Utilities Commission of State of California v. United States, 355 U. S. 534 ..... 6, 7

Railroad Commission of Texas v. Pullman Co., 312 U. S. 496 ..... 7

Re Oliver, 333 U. S. 257 ..... 11

Shipman v. Du Pre, 339 U. S. 321 ..... 6

Slaughter House Cases, 16 Wall. 36 ..... 12

Spector Motor Service v. McLaughlin, 323 U. S. 101 6

Sweezy v. New Hampshire, 354 U. S. 234 ..... 10, 12

Terral v. Burke Construction Co., 257 U. S. 529 .... 12

Toomer v. Witsell, 334 U. S. 385 ..... 7

Truax v. Corrigan, 257 U. S. 312 ..... 12

United States v. Congress Industrial Organization, 355 U. S. 106 ..... 12

United States v. Rumely, 345 U. S. 41 ..... 10, 12

Walker v. Hutchinson, 352 U. S. 112 ..... 11

Watkins v. United States, 354 U. S. 178 ..... 10, 12

Wieman v. Updegraff, 344 U. S. 183 ..... 9, 12

Yick Wo v. Hopkins, 118 U. S. 356 ..... 14

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*Appellant,*

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BRUCE BENNETT, ATTORNEY GENERAL OF THE STATE OF ARKANSAS, *et al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS

## STATEMENT AS TO JURISDICTION

Appellant appeals from the judgment of the United States District Court for the Eastern District of Arkansas entered on January 17, 1959, staying proceedings and retaining jurisdiction until efforts to obtain an appropriate adjudication in the state courts have been exhausted and submits this Statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

### Opinion Below

The District Court, on January 17, 1959, after hearing, delivered orally its opinion citing its reasons for granting appellees' motion to stay proceedings. This opinion is not yet reported and is appended in the appendix hereto, *infra* at page 15. The formal order and judgment staying proceedings was filed on January 26, 1959 and is appended in the appendix hereto, *infra* at page 19.

## Jurisdiction

This suit was filed in the lower court pursuant to Title 28, United States Code, Sections 1331, 1332, 1343, 2281 and 2284. Appellant sought a declaratory judgment and an interlocutory and permanent injunction to restrain the enforcement of Acts No. 12, 13, 14 and 16 of the 1958 Second Extraordinary Session of the General Assembly of the State of Arkansas.

Appellees' motion to stay the proceedings on the ground that the statutes involved had not been construed by the courts of the State of Arkansas was granted by order and judgment filed on January 26, 1959. Appellant filed its notice of appeal in the court below on February 5, 1959 (R. 33).

This Court has jurisdiction to review by direct appeal the judgment and order complained of pursuant to the provisions of Title 28, United States Code, Sections 1253 and 2101(b). The following decision sustaining this Court's jurisdiction to review the judgment in this case. *Bryan* v. *Austin*, 148 F. Supp. 563 (E. D. S. C., 1957), vacated as moot, 354 U. S. 933; *National Association for the Advancement of Colored People* v. *Patty*, 159 F. Supp. 503, probable jurisdiction noted *sub nom Harrison* v. *National Association for the Advancement of Colored People*, — U. S. —, 27 L. W. 3099, October 13, 1958.

## Statutes Involved

The statutes are set forth in the appendix hereto, *infra* at pages 20-33. Briefly the statutes provide as follows: Act No. 12 requires organizations engaged in activities "designed to hinder, harass and interfere with the powers and duties of the State of Arkansas to control and operate its public schools" to file a list of its members in the county clerk's office upon request of the county judge.

Act No. 13 empowers the Attorney General, should he "ascertain or have reason to believe" that an organization has evaded or attempted to evade or defraud the State of taxes due, to procure an *ex parte* order from any chancery court authorizing him and police officials to visit the office or headquarters of the organization and secure any and all evidence showing that the organization has evaded the tax laws.

Act No. 14 defines the crime of barratry as acts exciting and stirring suits, acts tending to breach the peace with the purpose or intention of such acts resulting in litigation, encouraging the bringing of law suits, the giving of financial assistance without being a party to the suit or with no direct or substantial interest in the relief sought.

Act No. 16 makes it a crime for any organization to solicit, request or donate money, or give any other assistance as an inducement to any person to commence or prosecute further any proceedings in any court before any administrative board or agency in the state or any United States court located within the state. Exempted from operation of this statute are contingent fee contracts where the attorney does not pay or protect the client from payment of costs and expenses of the litigation, suits involving title or possession of real or personal property, suits involving legality of assessments or collection of taxes, or suits involving rates or charges by common carriers or public utilities, criminal prosecution and payment of attorneys by legal aid societies approved by the State Bar.

## Question Presented

Whether the court below abused its discretion in not granting appellant a hearing on the merits and misconstrued the decisions of this Court as to the necessity of appellant seeking a construction of the statutes involved in the state courts before federal jurisdiction could appropriately be invoked?

## Statement of the Case

Appellant, the National Association for the Advancement of Colored People, is a nonprofit New York corporation qualified to do business in the State of Arkansas. The basic aims and purposes of the organization is to eliminate racial barriers which deprive Negro citizens of equal citizenship rights in the United States. See *National Association for the Advancement of Colored People* v. *Alabama*, 357 U. S. 449. Appellant has chartered branches and an Arkansas State Conference of NAACP Branches in Arkansas. These are independent unincorporated associations, the State Conference being the organization through which the local branches seek to act in concert and pool their resources on matters of state-wide interest.

This Court may well take judicial notice of the controversy over school desegregation in Arkansas. As a part of the effort to frustrate school desegregation, not only has legislation been enacted directly seeking to accomplish this purpose, but also legislation has been passed to restrain the activities of or destroy appellant organization.[1]

---

[1] In 1957, at its regular session, the General Assembly enacted several laws to prevent and retard desegregation of the schools. Act No. 83, §§ 6-801 thru 6-816, Ark. Stat. 1947 Ann., created a State Sovereignty Commission "to protect the sovereignty of the State of Arkansas and her sister states from encroachment by the federal government and * * * provide legal assistance * * * upon matters relating to the commingling of races in the public schools of the State." The Commission was authorized to examine the records and books and papers concerning this question and to require production of such records and secure conviction of such persons in such organizations who refused to produce same.

Act No. 84, § 80-1525, Ark. Stat. 1947 Ann., suspended the operation of the compulsory school attendance law where to enforce it would require students to attend a desegregated school.

Act No. 85, § 6-817, Ark. Stat. 1947 Ann. required the registration of all persons and organizations engaged in promoting integration of the races in the public schools.

On August 23, 1958, the Governor called the General Assembly into extraordinary session to enact laws to preserve school segregation and to meet the problem posed by the decision of the Court of Appeals in *Aaron* v. *Cooper*, 257 F. 2d 33 (8th Cir., 1958). The Assembly enacted the laws proposed by the Governor providing for school closing when faced with integration, the withholding of state funds from integrated schools, furnishing of funds to private schools and other segregated public schools which the students elected to attend, permitting the transfer of students from integrated to segregated schools, providing for separate classes for instruction of white and Negro students within integrated schools and requiring public officials to list the organizations to which they belong (Acts No. 4, 5, 6, 7 and 10 of the 1958 Second Extraordinary Session).

The instant laws were adopted at the same session and are specifically designed to destroy appellant, to prohibit its activities within Arkansas, to prohibit its advocacy of school desegregation and to insulate governmentally enforced school segregation in the State of Arkansas against attack by Negro residents of the state.

Appellant brought the instant action in the court below seeking to have the statutes declared unconstitutional because they pose a serious threat to the continued successful functioning of appellant within the state. The court below took the view that "whatever procedural pathway is pursued . . . the case will eventually end in the Supreme Court of the United States, and . . . the ultimate result will be the same, whether the . . . claim of the unconstitutionality of these statutes is heard and ruled upon by this court or by the courts of the State" (R. 28). Appellant contends that the reasons underlying the policy of federal courts staying proceedings pending construction of state legislation in the state courts are not present in this case, and that there was a duty on the court below to hear and determine on the merits the constitutional validity of these provisions.

## The Question Presented is Substantial

1. The court misconstrued the relevant authority and abused its discretion in granting appellees' motion to stay. This Court has clearly held that where a state statute is "unconstitutional on its face," the equity powers of a federal court *may* be invoked without the preliminary necessity of prior resort to a state administrative or judicial tribunal. See *Lovell* v. *City of Griffith*, 303 U. S. 444; *Public Utilities Commission of State of California* v. *United States*, 355 U. S. 534.

The doctrine of abstention is a policy defined by decisions of this Court requiring that the federal courts, in exercise of a cautious discretion, avoid passing on the constitutionality of state legislation in situations where an authoritative interpretation of state law may avoid the constitutional issues which seem to be present. See *Spector Motor Service* v. *McLaughlin*, 323 U. S. 101; *Shipman* v. *DuPre*, 339 U. S. 321.

Recently, in *Government and Civil Employees Organizing Committee* v. *Windsor*, 353 U. S. 364, 366, this Court restated the doctrine of abstention as follows:

> "In an action brought to restrain the enforcement of a state statute on constitutional grounds, the federal court should retain jurisdiction until a definitive determination of local law questions is obtained from the local courts. One policy served by that practice is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. . . . Another policy served by that practice is the avoidance of the adjudication of abstract, hypothetical issues. Federal courts will not pass upon constitutional contentions presented in an abstract rather than in a concrete form."

That doctrine has no application where, as here, there are no local law issues to be resolved nor any other special

circumstances warranting state court proceedings within the abstention rationale. See *Toomer* v. *Witsell*, 334 U. S. 385, 392; *Bryan* v. *Austin, supra; National Association for the Advancement of Colored People* v. *Patty, supra.*

Unlike *Burford* v. *Sun Oil Co.*, 319 U. S. 315, or *Pennsylvania* v. *Williams*, 294 U. S. 176, the court below is not called upon to address itself to a "specialized aspect of a complicated system of local law outside the normal competence of a federal court," *Alabama Public Service Comm.* v. *Southern Ry.*, 341 U. S. 341, 360 (concurring opinion), but rather to an issue which by congressional enactments the federal judiciary is peculiarly endowed to entertain. Title 28, United States Code, Section 1343. There are no special applications of local law to be preliminarily resolved before the federal constitutional questions are reached. Cf. *American Federation of Labor* v. *Watson*, 327 U. S. 582. Consideration of these statutes do not "necessitate a tentative answer which may be displaced tomorrow by a state adjudication." *Railroad Commission of Texas* v. *Pullman Co.*, 312 U. S. 496, 500. Nor is there present here a situation where constitutional adjudication can be avoided by a definitive construction of the statutes involved. See *Public Utilities Commission of California* v. *United States, supra.* The language of these statutes occasions no uncertainty as to what they undertake to prohibit or as to whom prohibitions are directed and their unconstitutional purpose is clearly established by their terms and by the events which led to their adoption.

There is no doubt as to the statutes' reach and impact with respect to their application to appellant, the Arkansas State Conference, Arkansas NAACP Branches, their officers, members, contributors, employees, associates, and cooperating attorneys. Appellant and its Arkansas affiliates have contributed and propose to continue to contribute from funds solicited for this purpose towards the expenses of litigation in cases pending in the areas of the State of

Arkansas where appellees have a legal duty to enforce these laws.

The Arkansas Supreme Court has already upheld two city ordinances similar to Act No. 12. See *Bates* v. *Little Rock*, — Ark. —, decided December 22, 1958, now pending before this Court on petition for writ of certiorari.

As stated by Judge Soper in *National Association for the Advancement of Colored People* v. *Patty, supra,* at page 523, "Where the statute is free from ambiguity and there remains no reasonable interpretation which will render it constitutional, there are compelling reasons to bring about an expeditious and final ascertainment of the constitutionality of these statutes to the end that a multiplicity of similar actions may, if possible, be avoided."

This Court's most recent pronouncement on the doctrine of abstention in *Chicago* v. *Atchison, Topeka, and Santa Fe R. Co.*, 357 U. S. 77, is particularly apposite here. There this Court held invalid a Chicago ordinance requiring a transfer service company, operating between railroad stations, to apply for and receive a certificate of convenience and necessity before being licensed. The city's argument that no federal court should have passed upon the ordinance's validity prior to an authoritative ruling and adjudication in the state courts was rejected at page 84 in the following terms:

> "We see no ambiguity in the section which calls for interpretation by the state courts. * * * Remission to those courts would involve substantial delay and expense, and the chance of a result different from that reached below, on the issue of applicability, would appear to be slight."

The effect of these statutes is to place a cloud upon appellant's activity and deter its lawful operation within the state. The injury to appellant and the interests it represents, together with the lack of ambiguity of the legis-

lation involved render the judgment of the court below erroneous.

2. These statutes are unambiguous and their conflict with the federal Constitution clear. The language of the four statutes involved in this case, as well as their legislative background, clearly demonstrates the determination of the State of Arkansas to attempt to shield its policy of racial segregation from judicial and public challenge. Their immediate goals and results are (1) to prevent Negroes from resorting to the courts (especially federal) in order to achieve equality before the law, and thus bar the sole effective means presently available to Negroes for this purpose in that state; and (2) to prohibit "communication" through education and peaceful persuasion on the issue of racial discrimination and thus prevent a resulting public opposition to the course being followed by state authorities.

With these statutes, Arkansas seeks to destroy appellant as the chief channel through which Negroes seek vindication of their constitutional rights to freedom from state imposed discrimination. The statutory scheme prohibits charitable assistance to Negro litigants seeking to secure their constitutional rights (Acts No. 14 and 16). Association with appellant and participation in its activities are effectively deterred by placing heavy penalties on charitable contributions to Negro litigants (Acts No. 14 and 16), and by exposing members, contributors, attorneys, etc., to harassment as well as economic and physical reprisals through the disclosure requirements (Acts No. 12 and 13). As Justice Frankfurter wrote in *Wieman* v. *Updegraff*, 344 U. S. 183, 185, " . . . joining is an exercise of the rights of free speech and inquiry." Under these statutes persons associated with appellant organization would be publicly identified in an atmosphere charged with racial prejudice. The disclosure provisions clearly infringe upon free speech and assembly rights of appellant, its affiliates and members, contributors, and cooperating attorneys. *National Associa-*

*tion for the Advancement of Colored People* v. *Alabama*, *supra*.

"There is no general authority to expose the private affairs of individuals without justification. . . ." *Watkins* v. *United States*, 354 U. S. 178, 187. And see *National Association for the Advancement of Colored People* v. *Alabama*, *supra*, at page 462; *Sweezy* v. *New Hampshire*, 354 U. S. 234, 245, 250-251; *United States* v. *Rumely*, 345 U. S. 41, 56-58 (concurring opinion); *American Communications Association* v. *Douds*, 339 U. S. 382, 402. Moreover, in the existing hostile atmosphere in Arkansas, it is clear that identification with appellant's causes will subject the persons affected to harassment, intimidation, loss of employment, and other manifestations of public hostility. Under similar circumstances, this Court found enforced disclosure of the names and addresses of appellant's members in Alabama an unlawful interference with freedom of association in *National Association for the Advancement of Colored People* v. *Alabama*, *supra*.

As in the *Alabama* case, *supra*, the "substantiality" of Arkansas' "interest in obtaining the membership lists" is insufficient to sustain the constitutionality of Acts No. 12 and 13. Even assuming that preserving peace, avoiding disruption of the public school system and detecting law violations were these statutes' true purposes, nevertheless such ends may not be achieved by denying rights secured by the Constitution. *Morgan* v. *Commonwealth of Virginia*, 328 U. S. 373, 380; *Ex parte Endo*, 323 U. S. 283, 302; see *Cooper* v. *Aaron*, 358 U. S. 1; *Korematsu* v. *United States*, 323 U. S. 214, 216; *Buchanan* v. *Warley*, 245 U. S. 60, 81; *Lonesome* v. *Maxwell*, 220 F. 2d 386 (4th Cir., 1955), aff'd 350 U. S. 877. Indeed the preservation of peace, the orderly administration of public schools and law enforcement can be successfully undertaken without registration of those organizations and persons advocating an end to racial discrimination, and indiscriminate ransacking of organizational files and records.

Furthermore, the language of Acts No. 12 and 13 clearly demonstrate that their real purpose is to prevent interference with Arkansas' policy and practice of segregated public school education. Such a purpose not only obviously fails to constitute justification for the disclosure and search and seizure requirements of these statutes, thereby rendering the statutes invalid under the due process clause of the Fourteenth Amendment, but also clearly reveals the statutes' discriminatory nature in seeking to preserve state-enforced racial inequality, thereby rendering them invalid under the equal protection clause. *Brown* v. *Board of Education*, 347 U. S. 483.[2]

Moreover, Act No. 13 does not meet even the rudimentary requirements of due process as guaranteed by the Fourteenth Amendment. Upon a mere allegation that he has reason to believe that an organization is violating state tax laws, the Attorney General may procure an *ex parte* order authorizing him to search the offices of the organization for evidence that *any* law has been violated. The accused organization is then faced with the alternative of surrendering its property or being summarily held in contempt without ever having had notice or the opportunity to be heard. There is nothing peculiar about litigation between the government and its citizens that should deprive those citizens of a right to be heard. *Walker* v. *Hutchinson*, 352 U. S. 112, 116-117; *Covey* v. *Somers*, 351 U. S. 141; *Mullane* v. *Central Hanover B. & T. Co.*, 339 U. S. 306; cf. *Re Oliver*, 333 U. S. 257, 273-276.

When appellant and its affiliates take concerted action in the form of joint sponsorship of litigation to secure an end to racial discrimination by agreeing to furnish counsel and defray court costs, members of the organization are exercising their rights to freedom of expression as a group on public issues and the right to pool resources to make

[2] Acts Nos. 12 and 13 also deny equal protection for reasons discussed in respect to Acts 14 and 16.

themselves heard. Cf. *Sweezy* v. *New Hampshire*, *supra*. See *Watkins* v. *United States*, *supra*; *United States* v. *Rumely*, *supra*; *Wieman* v. *Updegraff*, 344 U. S. 148; *United States* v. *Congress Industrial Organization*, 355 U. S. 106, 143-144 (concurring opinion). When appellant and its associates solicit financial contributions from the public to assist in defraying the expenses of such litigation, they are exercising (on their own behalf as well as on behalf of the people they represent) the right to influence others, a right incidental to the exercise of freedom of speech and assembly. *Murdock* v. *Pennsylvania*, 319 U. S. 105; *Follett* v. *McCormick*, 321 U. S. 573. The state of Arkansas cannot validly proscribe such exercise of free expression and avoid the mandate of the First and Fourteenth Amendments merely by terming such activity "barratry."

Moreover, "due process of law" obviously prohibits a state from closing the judicial door on Negro citizens in Arkansas seeking to secure their constitutional rights, for unfettered access to the courts is the right of every Arkansas citizen. *Terral* v. *Burke Construction Co.*, 257 U. S. 529; see *Truax* v. *Corrigan*, 257 U. S. 312, 334; *Barbier* v. *Connally*, 113 U. S. 27, 31; *Slaughter House Cases*, 16 Wall. 36; *Crandall* v. *Nevada*, 6 Wall. 35, 44.

Implied in this right of access to the federal courts is the right to assist and the right to accept assistance necessary to adequately present the issues to the courts. The cases against state imposed racial segregation are of great public interest and are too costly for the average individual litigant. To leave the federal courts open only to the litigant able to finance such a case and the appeals involved is to effectively close the door to the great majority of aggrieved Negro citizens.

In seeking to insure the success of its policy of opposition to any and all efforts toward desegregation, Arkansas has struck at the main bulwark of relief against governmental oppression, i. e., free access to the courts. Moreover,

Arkansas has distorted traditional concepts of barratry in such a way as to violate the constitutional guarantee of due process.

In Arkansas, both the legislative and executive arm of government oppose elimination of state-enforced racial prohibitions. As a result, the only avenue of redress for one seeking to remove such restrictions is the courts. Appellant has in the past and at the present is seeking to aid Arkansas Negroes in removing such barriers in public educational facilities by financing the litigation of those Negroes who desired to remove such restrictions. The actual operative effect of the statutes here at issue is to cut off appellant's financial aid in such cases. As a direct consequence, indigent Negroes, as well as Negroes of moderate means are, in reality, denied access to the courts.

Freedom from state interference with previously recognized methods of free legal assistance necessary to adequatly present legal cases must be secured, if any, but the wealthy individual citizen is to possess the right of recourse to the judiciay.

In addition to offending the due process clause, such unreasonable state interference, as is presented by Acts No. 14 and 16, also constitutes a blatant denial of equal protection of the laws as their discriminatory purpose consists of preventing access to the courts on the basis of race and color in an effort to preserve segregation. The Arkansas legislature, recognizing that group sponsorship of litigation is involved in all of the exceptions contained in Act No. 16 and recognizing the wide variety of cases other than racial segregation cases in which such group sponsorship takes place, has endeavored to exempt from the statute's operation all group sponsored litigation which does not involve state imposed racial restrictions. Certainly a state cannot permit all groups sponsorship of litigation except that relating to racial discrimination. This

constitutes a clear denial of equal protection. *Yick Wo v. Hopkins*, 118 U. S. 356.

Equally clear is the destructive nature of the statutes with reference to the right of attorneys associated with appellant to practice their profession free from arbitrary governmental interference. Lawyers who volunteer their professional services in cases which appellant support, or who accept payment of their fees or court costs from appellant on behalf of their clients, subject themselves to disbarment as well as criminal penalties under Acts No. 14 and 16.

Thus, it is clear that the challenged statutes unlawfully interfere with the activities of appellant, its affiliates, members, contributors, and cooperating attorneys in unmistakable violation of constitutional guarantees.

## CONCLUSION

**For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the District Court ordered to proceed to a hearing on the merits.**

Respectfully submitted,

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# APPENDIX

## Opinion of District Court

January 17, 1959

(Whereupon, at the hour of 2:00 o'clock, p. m., the hearing in the within cause was resumed pursuant to the recess heretofore taken, and the following further proceedings were had:)

The Court: (Judge John B. Sanborn)

The procedural problem presented by the motions to stay further proceedings in this action until the courts of the State of Arkansas have an opportunity to interpret and rule upon the validity of the statutes of that State which are under attack, is whether this federal three-judge court shall hear this case on the merits and determine the question of the constitutionality of the statutes in suit, or whether, in the exercise of its equitable powers and out of regard for the independence of the State and its courts, this court should, for the time being, merely retain jurisdiction of the case and remit the plaintiff to its remedies in the courts of the State.

It seems obvious that whatever procedural pathway is pursued by the plaintiff, the case will eventually end in the Supreme Court of the United States, and that the ultimate result will be the same whether the plaintiff's claim of the unconstitutionality of these statutes is heard and ruled upon by this court or by the courts of the State.

The general doctrine established by the Supreme Court in many cases is that where the constitutionality of an unconstrued state statute is challenged in a federal trial court as violative of the Federal Constitution, the court should stay its hand, but retain jurisdiction of the case until all doubts as to the meaning and scope of the statute have been resolved in the courts of the state. Three of the leading cases are: *Railroad Commission of Texas* v. *Pullman Company*, 312 U. S. 496; *Spector Motor Service, Inc.* v. *McLaughlin*, 323 U. S. 101; and *Albertson* v. *Millard*, 345 U. S. 242.

In *Spector Motor Service, Inc.* v. *McLaughlin,* the Supreme Court said (page 105 of 323 U. S.):

> "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable. And so, as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law. Railroad Commission v. Pullman Co., supra (312 U. S. 496); Chicago v. Fieldcrest Dairies, 316 U. S. 168; In re Central R. Co. of New Jersey, 136 F. 2d 633. See also Burford v. Sun Oil Co., 319 U. S. 315; Meredith v. Winter Haven, 320 U. S. 228, 235; Green v. Phillips Petroleum Co., 119 F. 2d 466; Findley v. Odland, 127 F. 2d 948; United States v. 150.29 acres of Land, 125 F. 2d 878. Avoidance of such guesswork, by holding the litigation in the federal courts until definite determinations on local law are made by the state courts, merely heeds this time-honored canon of constitutional adjudication."

In *Albertson* v. *Millard,* which involved the Michigan Communist Control Bill, requiring a registration of Communists, the Communist Party, and Communist front organizations, a three-judge District Court ruled upon the constitutionality of the Act. The Supreme Court said (pages 244-245 of 345 U. S.):

> "Interpretation of state legislation is primarily the function of state authorities, judicial and administrative. The construction given to a state statute by the state courts is binding upon federal courts. There has been no interpretation of this statute by the state courts. The absence of such construction stems from the fact this action in federal court was commenced only five days after the statute became law."

"There is pending in the Circuit Court for Wayne County, Michigan, a bill seeking a declaratory judgment that the Act is unconstitutional, both on Federal and state grounds. That action is being held in abeyance pending our mandate and decision in this case.

"We deem it appropriate in this case that the state courts construe this statute before the District Court further considers the action. See Rescue Army v. Municipal Court, 331 U. S. 549 (1947); American Federation of Labor v. Watson, 327 U. S. 582 (1946); and Spector Motor Service v. McLaughlin, 323 U. S. 101 (1944).

"The judgment is vacated and the cause remanded to the District Court for the Eastern District of Michigan with directions to vacate the restraining order it issued and to hold the proceedings in abeyance a reasonable time pending construction of the statute by the state courts either in pending litigation or other litigation which may be instituted."

The most recent case in the Supreme Court appears to be *Government and Civic Employees Organizing Committee, CIO* v. *Windsor*, 353 U. S. 364. The Supreme Court said on page 366:

"We do not reach the constitutional issues. In an action brought to restrain the enforcement of a state statute on constitutional grounds, the federal court should retain jurisdiction until a definitive determination of local law questions is obtained from the local courts. One policy served by that practice is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. Spector Motor Co. v. McLaughlin, 323 U. S. 101, 105."

The plaintiff does not question the existence of the general doctrine, but contends that the instant case does not come within it, because the statutes involved are unambiguous and unquestionably unconstitutional as violative

of the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. There is respectable authority for the proposition that where the unconstitutionality of a statute is clear, it is unnecessary for the court to await state court adjudication.

The *National Association for the Advancement of Colored People* v. *Patty*, D. C. E. D. Va., 159 F. Supp. 503, Circuit Judge Soper, speaking for the majority of a three-judge court (on page 523) said:

> "* * * As heretofore noted, the problem for determination is essentially a federal question with no peculiarities of local law. Where the statute is free from ambiguity and there remains no reasonable interpretation which will render it constitutional, there are compelling reasons to bring about an expeditious and final ascertainment of the constitutionality of these statutes to the end that a multiplicity of similar actions, may, if possible, be avoided."

Assuming, without deciding, that the unconstitutionality of the Arkansas statutes in suit is obvious, as the plaintiffs claim, it reasonably can be believed that it would be more wholesome and more logical to permit the courts of Arkansas to rule upon their validity in the first instance than to have this court do so, and that it would be more in harmony with the philosophy underlying the doctrine established by the Supreme Court relative to the federal courts affording the state courts an opportunity to pass upon the construction and effect of local statutes.

We think that under circumstances such as this court is confronted with, it has discretion as to whether it will proceed to an adjudication or whether it will require the plaintiff to seek its remedy in the courts of the State.

We, therefore, grant the defendants' motions, and will "retain jurisdiction until efforts to obtain an appropriate adjudication in the state courts have been exhausted".

**Order of the Court, Filed January 26, 1959**

On this day, pursuant to the opinion of the Court rendered by Judge Sanborn, IT IS ORDERED that the motion for a stay of proceedings filed herein by the defendant, Bruce Bennett, Attorney General of the State of Arkansas, and joined in by certain other defendants, be, and the same hereby is, granted, and that this Court will retain jurisdiction of this cause until efforts to obtain an appropriate adjudication in the state courts have been exhausted.

This the 17th day of January, 1959.

/s/ JOHN B. SANBORN
*United States Circuit Judge*

/s/ JNO. E. MILLER
*United States District Judge*

/s/ J. SMITH HENLEY
*United States District Judge*

**Act No. 12, 2nd Extraordinary Session, 1958**

A Bill

For an Act to Be Entitled: "An Act to Provide Assistance in the Administration and Financing of the Public Schools of Arkansas and for the Maintenance of Law, Peace, and Order in the Operation of the Public Schools; Requiring Certain Organizations to File Certain Information Under Oath in the County Clerk's Office Upon the Request of the County Judge; Providing a Penalty for Violations and for Other Purposes."

*Be it Enacted by the General Assembly of the State of Arkansas:*

Section 1. It is hereby declared that the purpose of this act is to provide for the maintenance of law, peace and order in the operation and administration of the public schools by requiring certain organizations engaged in activities designed to hinder, harass, and interfere with the powers and duties of the State of Arkansas to control and operate its public schools, and which activities may result in a serious disturbance of the public peace, to register and report certain information upon the request of the county judge. The General Assembly further declares that the disclosure of such information is essential to the health, safety and general welfare of the people of Arkansas.

Section 2. The term "organization" as used herein means any group of persons, whether incorporated or unincorporated, and includes any civic, fraternal, political, mutual benefit, legal, medical, trade or other kind of organization.

Section 3. Any organization operating of functioning within any county of this State engaged in activities

designed to hinder, harass and interfere with the powers and duties of the State of Arkansas to control and operate its public schools, upon the request of the county judge of such county shall file with the county clerk's office the following information, subscribed under oath, before a notary public, within seven days after such request is made:

A. The official name of the organization and list of members.

B. The office, place of business, headquarters or usual meeting place of the organization.

C. The officers, agents, servants, employees or representatives of the organization.

D. The purpose or purposes of the organization.

E. A statement disclosing whether the organization is subordinate to a parent organization, and if so, the name of the parent organization.

It shall be the duty of the person having custody or control of the records of the organization to furnish the information herein required.

SECTION 4. Information filed pursuant to Section 3 of this act is hereby declared public and subject to the inspection of any interested party.

SECTION 5. Any person or organization who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), and each day of violation shall constitute a separate offense. All penalties collected under this section shall be forwarded to the State Treasurer and by him credited to the common public school fund.

SECTION 6. The county clerk shall receive the sum of two dollars ($2.00) for recording the information as herein

required which sum shall be forwarded to the State Treasurer and there credited to the common public school fund.

SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. It has been found and declared by the General Assembly that it is vital to the public interest and welfare that information to the extent herein provided be obtained with respect to organizations whose activities are causing or may cause interference with the orderly administration of the public school system, which constitutes a threat to the public peace. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

**Act. No. 13, 2nd Extraordinary Session, Approval September 12, 1958**

A BILL

FOR AN ACT TO BE ENTITLED: "AN ACT TO PROVIDE FOR ASSISTANCE IN THE ADMINISTRATION AND FINANCING OF THE PUBLIC SCHOOLS OF ARKANSAS, AND IN CONJUNCTION THEREWITH, AUTHORIZING THE ATTORNEY GENERAL TO VISIT THE OFFICES OF VARIOUS ORGANIZATIONS OR ASSOCIATIONS, WHETHER INCORPORATED OR NOT, FOR THE PURPOSE OF PROCURING EVIDENCE TO THE EFFECT THAT SUCH ORGANIZATIONS OR ASSOCIATIONS HAVE HINDERED THE ORDERLY ADMINISTRATION OF THE PUBLIC SCHOOLS OR HAVE VIOLATED OTHER LAWS OF THE STATE OF ARKANSAS:"

*Be It Enacted by the General Assembly of the State of Arkansas:*

SECTION 1. It is hereby declared that the purpose of this act is to assist in the administration and financing of the public schools and higher educational facilities now provided by the State of Arkansas, and in conjunction therewith, it is hereby declared to be the intent of the General Assembly that in view of the fact that certain organizations, whether incorporated or not, have heretofore interfered with the peace and proper administration of the public schools and institutions of the State of Arkansas, and it is in the public interest to such schools and institutions that the Attorney General of the State of Arkansas have such powers as is hereinafter provided for.

SECTION 2. If the Attorney General of the State of Arkansas should ascertain or have reason to believe that any organization or association, whether incorporated or not, has evaded, attempted to evade, or has defrauded the State of Arkansas of taxes due it under the laws of the State of Arkansas, he may, upon the procurement of an order ex parte from any Chancery Court authorizing him and the duly elected sheriff or his deputy to visit the office or headquarters of any organization or association, and

there secure copies, photostatic or otherwise, reproduce, photograph, or otherwise record any and all evidence found evidencing the fact that such organizations or associations have evaded or defrauded the State of Arkansas of the payment of the legal amount of taxes due and payable by such organizations or associations, or has otherwise violated any of the laws of the State of Arkansas.

SECTION 3. Any person, firm or corporation refusing the Attorney General access to its files, records, correspondence or other data, may be summarily taken before the Court issuing the visitation order and there held in contempt of the Court's order.

SECTION 4. Any person violating the provisions of Section 2 shall also be guilty of a misdemeanor of said refusal, and upon conviction thereof may be fined in a sum of not less than fifty dollars ($50.00), nor more than five hundred dollars ($500.00). plus imprisonment not to exceed a term of six months, or both fine and imprisonment.

SECTION 5. Evidence procured pursuant to the provisions of this act shall be admissible in all courts.

SECTION 6. The provisions of this act shall in no wise repeal the existing laws pertaining to the collection of the corporate franchise taxes, but shall be cumulative thereto.

SECTION 7. If any section, provision, clause or word of this act shall be judicially declared to be unconstitutional, such declaration shall not affect the remaining portions.

SECTION 8. It has been found and is declared by the General Assembly of Arkansas that certain organizations and associations have been hindering the orderly administration of the public schools and institutions of higher learning and have defrauded the State of Arkansas of the payment of certain taxes, and the passage of this act will alleviate such conditions. Therefore, an emergency is declared to exist and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.

**Act No. 14, 2nd Extraordinary Session, November 12, 1958**

A Bill

For an Act to Be Entitled: "An Act to Assist in the Administration of the Educational Program of the Public Schools and Institutions of Higher Learning Provided by the State of Arkansas, and in Conjunction Therewith to Provide a Definition for the Crime of Barratry; to Provide Penalties Therefor; and for Other Purposes."

Whereas, it has been determined by the Sixty-First General Assembly, Extraordinary Session, that certain persons as hereinafter defined have engaged in causing the institution of certain unnecessary litigation affecting the orderly administration of the public schools and institutions of higher learning, and

Whereas, it is further determined that the passage of this act will tend to alleviate the breaches of the peace, discourage barratry as hereinafter defined, both of which adversely affect the orderly administration of the public schools and institutions of higher learning maintained by the taxpayers of Arkansas;

Now Therefore,

*Be it Enacted by the General Assembly of the State of Arkansas:*

Section 1. For the purposes of this act the crime of barratry is hereby defined as any of the following:

A. Any person who shall engage in exciting and stirring suits and quarrels between individuals, or between an individual and the State, or between an individual and any legal entity, either at law or otherwise, shall be guilty of the crime of barratry.

B. Any person who commits an act tending to breach the peace, with the purpose of or intention of such act

resulting in a suit or litigation, either civil or criminal, shall be guilty of the crime of barratry.

C. Any person who seeks out and proposes to another person that they present and urge a suit against another person, the State of Arkansas, the United States or any other legal entity shall be guilty of the crime of barratry.

D. Any person who counsels, proposes, encourages, aids or assists another in the commission of acts tending to breach the peace, with the purpose of, or intention of such acts resulting in litigation between individuals or an individual and the State or an individual and any legal entity shall be guilty of the crime of barratry.

E. Any person who thereby seeks to obtain employment for himself or for another to prosecute or defend such action.

F. Any person who has no direct and substantial interest in the relief thereby sought.

G. Any person who does so with intent to distress or harass any party to such action.

H. Any person who directly or indirectly pays or promises to pay any money or other thing of value to, or the obligations of, any party to such an action.

I. Any person who directly or indirectly pays or promises to pay any money or thing of value to any other person to bring about the prosecution of maintenance of such an action.

J. Any person who shall wilfully bring, prosecute or maintain an action, at law or in equity, in any court having jurisdiction within the State, and who:

(1) has no direct or substantial interest in the relief thereby sought, or

(2) thereby seeks to defraud or mislead the court, or

(3) brings such action with intent to distress or harass any party thereto, or

(4) directly or indirectly receives any money or other thing of value to induce the bringing of such action, shall be guilty of the crime of barratry.

SECTION 2. The term "person" and the term "individual" are hereby declared to include a corporation, whether profit or non-profit, and associations.

SECTION 3. Any corporation or unincorporated association found guilty of the crime of barratry shall be forever barred from doing any business or carrying on any activity within the State, and in the case of a corporation, its charter shall be summarily revoked by the Secretary of State.

SECTION 4. The crime of barratry shall be punishable by a fine of not more than five thousand dollars ($5,000.00) or by imprisonment of not more than two years, or both, and in addition thereto may be enjoined by any interested person or persons.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

SECTION 6. The provisions of this act are cumulative and shall not be construed as repealing any existing statute or the common law of this State with respect to the subject matter of any of the provisions hereof.

SECTION 7. It has been found and is declared by the General Assembly of Arkansas that many persons are currently engaged in soliciting litigation that is interfering with and directly affects the orderly administration of the Arkansas public education system and that there is an immediate need for a method of preventing such practices. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety shall take effect from the date of its approval.

**Act 16, 2nd Extraordinary Session, September 12, 1958**

A BILL

FOR AN ACT TO BE ENTITLED: "AN ACT TO PROHIBIT THE FOMENTING AND AGITATION AND LITIGATION THAT INTERFERES WITH THE ORDERLY ADMINISTRATION OF PUBLIC SCHOOLS AND INSTITUTIONS OF HIGHER LEARNING; TO PROHIBIT THE SOLICITATION, RECEIPT, OR DONATION OF FUNDS FOR THE PURPOSE OF FILING OF PROSECUTING LAWSUITS; TO DEFINE MAINTENANCE, TO PROVIDE A PENALTY FOR ANY VIOLATION HEREOF; AND FOR OTHER RELATED PURPOSES."

*Be It Enacted by the General Assembly of the State of Arkansas:*

SECTION 1. It shall be unlawful for any person, firm, partnership, corporation, group, organization, or association, either incorporated or unincorporated, either before or after proceedings commenced,

(1) to promise, give, or offer, or to conspire or agree to promise, give or offer,

(2) to receive or accept, or to agree or conspire to receive or accept,

(3) to solicit, request, or donate, any money, bank note, bank check, chose in action, personal services or any other personal or real property, or any other thing of value, or any other assistance as an inducement to any person to commence or to prosecute further, or for the purpose of assisting such person to commence or prosecute further, any proceeding in any court or before any administrative board or other agency of the State of Arkansas, or in any United States court located within the said State; provided, however, this section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law or solicitor in chancery, for either a fixed fee or

upon a contingent basis, to represent such person, firm, partnership, corporation, group, organization, or association before any court or administrative agency.

SECTION 2. Any person violating any of the provisions of section 2 of this act shall be guilty of maintenance and, upon conviction thereof, shall be punished by imprisonment for one year in the State penitentiary.

SECTION 3. Every person who commences or prosecutes or assists in the commencement or prosecution of any proceeding in any court or before any administrative agency in the State of Arkansas, or who may take an appeal from any such rule, order, or judgment thereof, shall, on motion made by any of the parties of such proceedings or by the court or agency in which such proceeding is pending, file with such court or agency, as a condition precedent to the further prosecution of such proceeding, the following affidavit:

> I, (name), petitioner (or complainant, plaintiff, appellant or whatever party he may be) in this matter, do hereby swear (or affirm) that I have neither received, nor conspired to receive, any valuable consideration or assistance whatever as an inducement to the commencement or further prosecution of the proceedings in this matter.
>
> (Signature of Affiant)
>
> .....
>
> Affiant

Sworn to and subscribed before me on this, the (date) day of (month), 19 (year).

(Signature of Official)

.....

(Title of Official)

In the case of any firm, corporation, group, organization, or association required to make the above affidavit, such affidavit shall be made by the person having custody and control of the books and records of such firm, corporation, group, organization, or association.

SECTION 4. Every attorney representing any person, firm, partnership, corporation, group, organization, or association in any proceeding in any court or before any administrative agency in the State of Arkansas, or who may take an appeal from any rule, order, or judgment thereof, shall, on motion made by any of the parties to such proceeding, or by the court or agency in which such proceeding is pending, file, as a condition precedent to the further prosecution of such proceeding, the following affidavit:

I, (name) attorney representing (name of party), petitioner (or complainant, plaintiff, appellant or whatever party he may be) in this matter, do hereby swear (or affirm) that neither I nor, to the best of my knowledge and belief, any other person, firm, partnership, corporation, group, organization, or association has promised, given, or offered, or solicited, received, or accepted any valuable consideration or any assistance whatever to said (name of party) as an inducement to said (name of party) to the commencement or further prosecution of the proceedings herein.

(Signature of Affiant)

.....

Affiant

Sworn to and subscribed before me on this, the (date) day of (month), 19 (year).

(Signature of Official)

.....

(Title of Official)

Provided, however, that if, on motion made, such affidavits are promptly filed, the failure in the first instance to have filed same shall not constitute grounds for a continuance of such proceedings.

SECTION 5. Every person or attorney who shall file a false affidavit shall be guilty of perjury and shall be punished as provided by law. Every attorney who shall file a false affidavit, or who shall violate any other provision of this act, upon final conviction thereof shall also be disbarred by order of the court in which convicted. Any attorney who shall file a false affidavit, or violate any other provision of this act, and who is not a member of the Arkansas Bar shall, in addition to the other penalties provided by this act, be forever barred from practicing before any court or administrative agency of this State.

SECTION 6. No person shall be excused from attending or testifying or producing evidence of any kind before a grand jury, or before any court, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subject to any penalty or forfeiture for, or on account of, any transaction, matter, or thing, concerning which he may be required to testify or produce evidence, documentary or otherwise, before the grand jury or court or in any cause or proceeding; provided, that no person so testifying shall be exempt from prosecution or punishment for perjury in so testifying. Any person who shall neglect or refuse to so attend or testify, or to answer any lawful inquiry, or to produce books or other documentary evidence, if in his power to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one

hundred dollars ($100.00) or more than one thousand dollars ($1,000.00), or by imprisonment for not more than one hundred eighty (180) days, or by both such fine and imprisonment.

SECTION 7. Provided, however, that the provisions of this act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not pay or protect the client from payment of the costs and expenses of litigation, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, nor shall this act apply to suits involving the legality of assessment or collection of taxes, nor shall this act apply to suits involving rates or charges by common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Arkansas State Bar.

Nothing in this act is intended to be in derogation of the constitutional right of real parties in interest to employ counsel or to prosecute any available legal remedy; the intent, as herein set out, is to prohibit and punish, more clearly and definitely, champerty, maintenance, barratry, and the solicitation or stirring up of litigation whether the same be committed by licensed attorneys or by others who are not real parties in interest to the subject matter of such litigation.

SECTION 8. If any section, subsection, clause, phrase, or requirement of this act is for any reason held to be unconstitutional, void or unenforceable, such decision shall not affect the validity of the remaining portions.

SECTION 9. It is hereby determined that the decisions of the United States Supreme Court in the school segregation cases require solution of a great variety of local public school problems of considerable complexity immediately

and which involved the health, safety and general welfare of the people of the State of Arkansas and that the purpose of this act is to assist in the solution of these problems, and that the passage of his act will tend to prevent interference with the orderly administration of the public schools of Arkansas. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from the date of its approval.